UNITED STATES PERMANENT MISSION TO THE
ORGANIZATION OF AMERICAN STATES
DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

No. 89-B

The United States Mission to the Organization of American States presents its compliments to the Permanent Missions to the Organization of American States and has the honor to refer to note No. 64-B which announced an exemption from property taxation to real property owned by foreign governments and used to house members of the staff of Permanent Missions to the Organization of American States.

The Department also wishes to refer to an October 7, 2009 "Notice to All Foreign Governments" addressed to consular posts by the Law Department of the City of New York, which suggests that the foreign governments that own such property remain responsible for continuing to pay the real property taxes that have been and will be assessed by the City on those properties. In this regard, the Department wishes to inform the Permanent Missions that the Secretary of State has clear authority under United States law to exempt from taxation properties owned by foreign states and used as residences for staff of Permanent Missions in the United

The Permanent Missions to the

Organization of American States,

Washington, D.C. October 28, 2009

States. The Department's June 23, 2009 Determination (a copy of which was attached to note 64-B) provided that exemption, is a valid exercise of United States federal authority, and preempts inconsistent New York State law.

The City of New York, however, has challenged the validity of the June 23 Determination in federal court and the court will resolve this dispute. The Department believes that the law is on its side, and although it cannot guarantee the outcome of the litigation, is confident that the court will uphold the Determination.

The City of New York's October 7 Notice states that the property tax exemption is not effective until the Department of State approves specific property as exempt from taxation. This is incorrect. When issued, the June 23 Determination made all covered property exempt, although the Department of State reserved the right to impose conditions, as appropriate, in specific cases. The Department subsequently requested that the Missions identify those properties that they believed to be exempt so that the Department might confirm the property's eligibility for tax exemption. The June 23 Determination nonetheless exempted foreign states from taxes assessed on covered property, prior to the Department's confirmation of eligibility.

Accordingly, pending the outcome of the litigation, the Permanent Missions may wish to consult with their legal counsel concerning the proper course of action in light of the United States Government's actions, including this note, and the actions of the City of New York, including matters raised in its October 7 notice.